

violation flowed from circumstances in which the attorneys did not think ahead to how the state court finally would resolve an evolving legal issue, and, indeed, reasonably reacted to existing events and then-current law, cannot constitute ineffective assistance under *Strickland*.<sup>4</sup>

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<sup>4</sup> In his BIO under the heading, "Statement," Morrisette makes misleading and false representations of fact which are wholly irrelevant to the issues presented in the Warden's petition. He states that Morrisette and Ms. White were "lovers." (BIO at 2, note 1). He also states that "Bill Anthony . . . was widely known to be [Ms.] White's lover. . . ." (BIO at 1). However, it is undisputed that, at the time of the murder, Morrisette denied he ever had had sexual relations with Ms. White and denied that he ever had been alone with her. (See Warden's appendix to brief in opposition, page 33, *Morrisette v. Washington*, No. 05-8227, pending before this Court). Morrisette had seen Ms. White only when he went to her home in the presence of his employer, Bill Anthony, and when he washed Ms. White's car at Anthony's place of business. (*Id.* at 14-15). Morrisette never has presented any evidence implicating Anthony in the murder. Morrisette gave the police an elaborate alibi, placing him away from Ms. White's residence, but he refused to take a polygraph test. (*Id.* at 15-17). At trial, Morrisette did not allege he ever had sexual relations with his victim and the medical examiner testified that the rape occurred close in time to the murder. (*Id.* at 10-11).

In his habeas proceeding below, Morrisette alleged for the first time he was Ms. White's "lover" but did not support it with anything but hearsay affidavits from his friends. Morrisette never has explained how he could have reconciled at trial his own statements, made contemporaneously at the time of the murder denying such a relationship, with the 24-years-after-the-fact hearsay stories of his friends. He never has explained how he could have turned the obvious evidence of rape (half naked victim sprawled on kitchen floor with clothing pushed up and severe stab wounds, including defensive wounds) into any sort of consensual act. He never has presented any evidence to demonstrate that anyone other than Ms. White's rapist - Morrisette - murdered her.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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